

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9020 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  
2. To be referred to the Reporter or not? : NO
  
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  
5. Whether it is to be circulated to the Civil Judge? : NO

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DAYAL @ GIRDHARI KHANCHAND LEDWANI SINDHI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 21/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Baroda City, Baroda  
passed an order on February 3, 1999 detaining the  
petitioner under the provisions of the Gujarat Prevention

of Antisocial Activities Act (for short PASA Act) in exercise of powers under Section 3(1) of the PASA Act.

2. In the grounds of detention the detaining authority took into consideration the four offences registered against the petitioner with Karelibaug, Pani Gate and Navapura Police Stations at Baroda. The authority also took into consideration the statements of three anonymous witnesses and exercised powers under Section 9(2) of the PASA Act by claiming privilege of not disclosing the identity of these witnesses. The authority found that the statements made by these witnesses and the fear expressed by the witnesses were correct and genuine and therefore there was need for exercise of power under Section 9(2) of the PASA Act. After considering the availability of less drastic alternative remedy, the authority came to the conclusion that they may not prove to be as efficacious as detention under PASA Act as the petitioner is required to be prevented immediately from pursuing his illegal and antisocial activities.

3. The petitioner by way of this petition challenges the order of detention mainly on two grounds. The first ground is that the Detaining Authority has exercised powers of detention under Section 9(2) in a mechanical manner. The statement of one of the anonymous witnesses has not been verified by the Detaining Authority and therefore the Authority could not have arrived at a subjective satisfaction for the need for exercise of powers under Section 9(2) of the PASA Act in respect of that particular witness. Another ground that is raised is that there is a delay in passing the order. The last registered offence is of 28-12-1998. In that connection the petitioner was bailed out on 31-12-1998. The statements were then recorded on 8th and 10th of January 1999, the same were verified on 24th January 1999 and the order was passed on 3rd February 1999. It has been argued that there is a lapse of about ten days between the date of verification of the statements and the order. This delay would falsify the genuineness of the satisfaction recorded by the authority for immediate need for preventing the petitioner from pursuing his activities. The Detaining Authority has not even attempted to explain the delay.

4. Ms. Subhadra Patel, learned advocate for the petitioner has relied on the above grounds only.

5. Learned Asst. Government Pleader Mr. H.H. Patel submitted that the factual part in respect of non-verification of statement of one of the anonymous

witness, he has no dispute. Likewise the dates indicated by the learned advocate for the petitioner also he has no dispute. He however, submitted that it cannot be said to be a case of delay. The authority has to apply its mind, take into consideration the material and then pass the order. In this view of the matter, he prayed that the petition may be dismissed.

6. Considering the rival contentions the first and foremost aspects that attract the attention of this court are the statements of three anonymous witnesses relied upon by the Detaining Authority. The Detaining Authority has exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of these witnesses. Now the authority has to record a satisfaction for the need of exercise of this power. Whether a witness has a genuine fear from the detenu or not can only be ascertained subjectively by the authority if it interrogates the witness and verifies and records a satisfaction thereafter. If that is not done, subjective satisfaction cannot be said to have been arrived at genuinely. Now, admittedly, in this case statements of only two witnesses are verified. Statement of third witness is not verified. This aspect is reflected even in the grounds of detention and it has remained undisputed even by the other side. This being so, the Detaining Authority could not have recorded satisfaction for the need to exercise power under Section 9(2) of the PASA Act in respect of the third witness. The order therefore would suffer from two defects. Firstly, that the Detaining Authority has not applied its mind to this aspect. The second defect being that non disclosure of identity of the third witness whose statement has not been verified by the Detaining Authority has infringed the right of the detenu of making an effective representation. The petition would therefore be eligible to be allowed only on this ground.

7. At this stage Ms. Patel does not press for a decision of this Court on the second ground raised by her in favour of the petitioner detenu.

8. For forming this view this Court has relied on the decision of this Court in Letters Patent Appeal No. 1191 of 1999 in Special Civil Application No. 221 of 1999 in the case between Shankarbhai Vishnubhai Sindhi v. Commissioner of Police decided on October 8, 1999.

9. In view of the above discussion, the petition deserves to be allowed, the same is hereby allowed. The petitioner-detenu Dayal @ Girdhari Khanchand Ledwani

Sindhi be set at liberty forthwith if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)